

EX PARTE OR LATE FILED

**FLEISCHMAN AND WALSH, L. L. P.**

ATTORNEYS AT LAW  
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P. C.

CHARLES S. WALSH

ARTHUR H. HARDING

STUART F. FELDSTEIN

RICHARD RUBIN

JEFFREY L. HARDIN

STEPHEN A. BOUCHARD

R. BRUCE BECKNER

HOWARD S. SHAPIRO

CHRISTOPHER G. WOOD

SETH A. DAVIDSON

MITCHELL F. BRECHER

WILLIAM F. ADLER

MATTHEW D. EMMER

JILL KLEPPE McCLELLAND

STEVEN N. TEPLITZ

PETER T. NOONE\*

ERIN R. BIRMINGHAM

REGINA R. FAMIGLIETTI

MARK G. JOHNSTON\*\*

TERRI B. NATOLI\*\*\*

June 30, 1995

\* NEW YORK AND NEW JERSEY BARS ONLY

\*\* NEW YORK BAR ONLY

\*\*\* VIRGINIA BAR ONLY

**HAND DELIVERED**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Ex parte Notice - MM Docket 92-266

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's rules, this is to advise that on Thursday, June 29, 1995, Barry Rosenblum, President, Time Warner of New York City Cable; Eric Tveter, Vice President and General Manager, Communications Services, Time Warner Cable of New York City; and Seth A. Davidson of Fleischman and Walsh, L.L.P. held separate meetings with Jill Luckett, Special Advisor to Commissioner Chong and with Maureen O'Connell, Legal Advisor to Commissioner Quello and Lisa Smith, Legal Advisor to Commissioner Barrett, to discuss issues affecting the above-referenced proceeding. The discussion concerned Time Warner Cable's position on the regulation of the rates charged by cable systems for service provided to commercial establishments as summarized in the attached materials to be associated with the appropriate docket and as set forth more fully in formal comments filed by Time Warner Entertainment Company, L.P. in the above-referenced proceeding.

DOCKET FILE COPY ORIGINAL

1400 SIXTEENTH STREET, N. W.  
WASHINGTON, D. C. 20036

(202) 939-7900  
FACSIMILE (202) 745-0916  
INTERNET fw\_law@clark.net

RECEIVED

JUN 30 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

No. of Copies rec'd  
List A B C D E

0+1

Mr. William F. Caton  
June 30, 1995  
Page 2

A copy of this ex parte notice was filed with the Commission and delivered to the above-named Commission personnel on June 30, 1995.

Very truly yours,

A handwritten signature in black ink, appearing to read "Seth A. Davidson", with a long horizontal flourish extending to the right.

Seth A. Davidson  
Counsel for Time Warner  
Entertainment Company, L.P.

cc: Jill Luckett  
Maureen O'Connell  
Lisa Smith

28185

## COMMERCIAL RATES

### I. Definition of Commercial Accounts.

"Commercial Accounts" refer to non-residential customers which subscribe to cable for a commercial purpose, *i.e.*, to attract consumers to their business as opposed to for the exclusive personal use of the business proprietor. Examples include bars, restaurants, hotels, motels, consumer electronics stores, offices and other places of business.

### II. There is no jurisdiction to regulate commercial rates.

- A. The 1992 Cable Act and legislative history focuses on "residential" customers.
- B. The effective competition test refers to "households," which is defined in terms of "full-time residents."
- C. If commercial establishments were counted as "households" subject to regulation, then many more cable systems would fall within the effective competition test. For example, the penetration for Time Warner's Brooklyn system would drop from 35.1% to 27.6%.

### III. There is no need or policy for regulating commercial rates.

- A. The comments have identified no pressing need to regulate commercial rates.
- B. Commercial users subscribe to cable in order to attract customers to their businesses, creating a much different demand/value equation than for residential cable service.
- C. Commercial users are sophisticated business people, capable of arms-length bargaining for rate and service offering that is reasonable in light of their business needs.
- D. Under the "fair use" doctrine, the copyright laws recognize this distinction between commercial and non-commercial uses.

### IV. Commercial cable service is fundamentally different from residential service.

- A. Commercial accounts often negotiate for a customized service package.
- B. Time Warner often installs a mini-headend for a commercial account.
- C. In order to compete, cable operators must be able to offer customized rate and service offerings to meet the needs of commercial accounts, as can cable's competitors.

- D. Providing service to commercial establishments, which involves negotiations with individual landlords and tenants, is a much lengthier and costlier process than serving residences.
- E. Time Warner faces numerous successful competitors for commercial customers, including SMATV and hotel package services such as LodgeNet and GuestServe. As a result, Time Warner's penetration of businesses in various New York City boroughs, for example, is far less than its residential penetration:

	Residential penetration	Commercial penetration
Manhattan	58.1%	3.7%
Queens	44.7%	1.5%
Brooklyn	35.1%	2.1%

- V. If the Commission Decides to Regulate Commercial Rates, it Should Do So Independent of its Residential Rate Regulation
  - A. The Commission must take into account the different price/value and demand factors applicable to commercial customers rather than blindly applying its residential rate structure to businesses.
  - B. A reasonable commercial rate must reflect the increased value commercial users achieve from receipt of cable service, whether a sports bar directly attracting patrons, a brokerage firm gaining valuable financial news over cable, etc.
  - C. The Commission's rate survey which formed the basis for its rate benchmarks collected data only regarding residential rates.
  - D. Similarly, Forms 393 and 1200 calculate basic and CPS tier rates in terms of the operator's standard rate card, and do not take into account individually negotiated commercial rate and service packages.
  - E. If the Commission imposes its residential rate regulation framework upon commercial customers, it must confirm that the cable operator may impose its authorized residential rate to each outlet in a commercial establishment (e.g., each office or hotel room).

**VI. Whether or Not the Commission Regulates Commercial Rates, it Should Not Require Commercial Rate Uniformity**

- A. The 1992 Cable Act uniform rate requirement (Section 623(a)) does not reflect any intent to include commercial customers.**
- B. It is impossible to create rate uniformity without uniformity of programming, which would destroy Time Warner's ability to create the customized programming packages that commercial subscribers request.**

**VII. Commercial Rates Should Not be Used to Offset Residential Rates**

- A. The goal of rate regulation is to set rates at reasonable levels that reflect a competitive market price, not to give residential subscribers a below-market rate subsidized by commercial rates.**